

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7511

Petition of Topsham Communications, LLC, for)
a certificate of public good to own and operate a)
cable television system to provide services in)
the Towns of Corinth, Topsham, Orange,)
Washington, Bradford, Newbury, Fairlee, West)
Fairlee, and Vershire, Vermont)

Order entered: 8/20/2009

I. INTRODUCTION

This docket concerns an application by Topsham Communications, LLC ("Topsham Communications" or the "Petitioner") for a certificate of public good ("CPG") to operate a cable television system in the Towns of Bradford, Fairlee, and West Fairlee and in those portions of the Towns of Corinth, Newbury, Orange, Topsham, Vershire, and Washington that are presently provided telephone service by Topsham Telephone Company, Inc. ("Topsham Telephone"). In this Proposed Final Order and Certificate of Public Good, I recommend that the Public Service Board (the "Board") grant the CPG with a number of conditions, as requested by the Petitioner and agreed to by the Vermont Department of Public Service (the "Department").

In addition to asking to serve in three complete towns, Topsham Communications is petitioning to serve portions of six other towns rather than the entirety of these towns. This is the first instance in many years in which the Board would be granting authority to provide cable television service to a service area within a municipality without providing such service to the entire municipality. It is appropriate to do so in this case because, in the affected towns¹, the Petitioner will not own the facilities over which the television service will be delivered. Rather this new television service will be delivered over existing telephone facilities owned and operated by the Petitioner's parent company, Topsham Telephone, whose service only partially

1. The six affected towns are Corinth, Newbury, Orange, Topsham, Vershire, and Washington.

covers the affected towns. By contrast, in Bradford, Fairlee, and West Fairlee, where the Petitioner plans to install its own fiber optic cable facilities, it is appropriate to grant authority to serve the entire town rather than a service area, provided the Petitioner is not required to overbuild the facilities of other service providers.

II. PROCEDURAL HISTORY

On April 2, 2009, Topsham Communications submitted an application under 30 V.S.A. §§ 503 and 504 (the "Application") seeking a CPG to provide cable television service in the Towns of Bradford, Fairlee, and West Fairlee and in those portions of the Towns of Corinth, Newbury, Orange, Topsham, Vershire, and Washington, Vermont, that are presently provided telephone service by Topsham Telephone (the "Proposed Service Area"). Topsham Communications has been approved to receive a Department of Agriculture Rural Utility Service ("RUS") Broadband Loan in the amount of \$2,229,000, and seeks to use that funding to extend television services to customers in communities where cable television is not currently available. Topsham Communications is a subsidiary of Topsham Telephone, which has provided telephone service in Orange County, Vermont, since 1907.

Copies of the Application were served on the Vermont Department of Public Service (the "Department"), the town clerks of Barre Town, Bradford, Brookfield, Corinth, Fairlee, Groton, Newbury, Orange, Plainfield, Ryegate, Strafford, Thetford, Topsham, Vershire, Washington, West Fairlee, and Williamstown, and to the superintendents of the Orange East Supervisory Union, the Orange North Supervisory Union, and the Rivendell Interstate School District.

On April 23, 2009, I convened a prehearing conference attended by the Petitioner, Topsham Communications, and the Department, each accompanied by their counsel. The parties agreed that they would file a stipulated order and certificate of public good or, in the absence of an agreement, a proposed litigation schedule by May 22, 2009. Also at the Prehearing Conference, the Petitioner and the Department agreed that no public hearing was necessary, and I accordingly determined that no such hearing would be held.

On May 5th I issued a memorandum setting May 15, 2009, as the deadline for requests to intervene. No requests for leave to intervene were filed with the Board. After two approved

extensions, Topsham Communications submitted on June 5, 2009, a letter to the Board describing the conditions upon which Topsham Communications had reached agreement with the Department ("June 5 Letter")².

On June 8, 2009, Topsham Communications and the Department filed with the Board a Proposed Final Order and Certificate of Public Good, which incorporates the terms of the June 5 Letter (together, the "Parties"). Petitioner also filed on June 8, 2009, supplemental prefiled testimony by Donald A. Ceresoli, Jr., which provided a few necessary additions and corrections to Petitioner's application.

Based on the substantial evidence of the record from the Petition, Application, prefiled testimony, the June 5 Letter, and the Stipulated Conditions, I hereby report the following findings of fact and conclusions of law to the Board in accordance with 30 V.S.A. § 8.

III. FINDINGS OF FACT

The criteria for determining whether to issue a CPG to an applicant are laid out in 30 V.S.A. §§ 504(b) and (c), and the so-called "EMCO criteria" in Board Rule 8.214(B).

A. Statutory and EMCO Criteria

(1) Petitioner

1. The Petitioner is a limited liability company duly organized and existing under the laws of the State of Vermont, with a principal place of business in East Corinth, Vermont. Petition ¶¶ 1–2.

2. Topsham Communications is authorized to provide resold local exchange and interexchange telecommunications in the State of Vermont pursuant to CPG # 838-CR (January 18, 2007), and is also authorized to provide intraLATA toll and competitive local exchange services in the State of New Hampshire. Petition ¶¶ 3–4.

3. Topsham Communications is a direct subsidiary of Topsham Telephone. Topsham Telephone has provided telecommunications services in Vermont since 1907, and it presently

2. Letter from Cassandra LaRae-Perez, Esq., to Susan M. Hudson, Clerk, dated June 5, 2009. Also attached to this submission was Supplemental Exhibit J-1, which described the expected Channel Lineup and Supplemental Exhibit G-1, which described the Petitioner's service packages and rates.

provides facilities-based local exchange service and intraLATA long-distance toll services on a resale basis to exchanges in Bradford, Corinth, Topsham, Newbury, Orange, Vershire, Washington, and West Fairlee, all located in Orange County, Vermont. Petition ¶ 6.

4. Topsham Telephone is a Vermont corporation which is a wholly-owned subsidiary of Citizens-Vermont Acquisition Corporation ("CVAC"), a New York corporation which is, in turn, a wholly-owned subsidiary of Citizens Telephone Company of Hammond, N.Y., Inc. ("Citizens of Hammond"), a New York corporation with its principal office at 26 South Main Street, Hammond, New York 13646. Petition ¶ 5.

5. Citizens of Hammond has provided cable television services to customers in northern New York for sixteen years through its subsidiary Citizens Cablevision, Inc., and for nine years through its subsidiary Castle Cable Television, Inc. Petition ¶ 8.

6. Since 2001, Citizens of Hammond has also provided to its telecommunications subscribers a digital video service ("Internet Protocol Television" or "IPTV"), which delivers cable television signals via telephone lines directly to a subscriber's home. Petition ¶ 11.

(2) Statutory Criteria — 30 V.S.A. § 504(b)(1)–(5)

Designation of adequate channel capacity and appropriate facilities for public, educational, and governmental use (30 V.S.A. § 504(b)(1))

A reasonably broad range of public, educational and governmental programming (30 V.S.A. § 504(b)(3))

7. The Petitioner will use a channel lineup offering approximately 225 channels. Its channel capacity and facilities have been designed to be adequate and appropriate for public, educational, and governmental ("PEG") use, and Petitioner will provide a reasonably broad range of PEG programming. Petition ¶¶ 25 and 30; Application supp. exh. J-1.

8. The Petitioner's channel lineup will provide at least one and up to three channels for PEG use. Petition ¶ 31; Application exh. J.

9. There are currently no Access Management Organizations ("AMOs") in the area; however, the Petitioner has promised to advertise the availability of channel capacity and to invite requests for PEG channels in accordance with Board Rule 8.405. Petition ¶ 31.

10. The Petitioner has further promised that, until an AMO is designated, it will broadcast a scrolling bulletin board which will be available for advertising local events in addition to advertising the availability of its channel capacity for PEG access. Petition ¶ 32.

11. The Petitioner has established an adequate funding mechanism to ensure the support and expansion of PEG programming and facilities on its system. Petition ¶¶ 33–34.

Adequate and technically sound facilities and equipment, and signal quality (30 V.S.A. § 504(b)(2))

12. The Petitioner's system was designed by Communications Consulting Services, Inc., an engineering consultant firm with extensive expertise in designing telecommunications and cable television systems. Petition ¶ 35; Ceresoli pf. 4/2/09 at 9.

13. The Petitioner's system will consist of approximately 147 strand miles of fiber optic cable in addition to its current copper network. Ceresoli supp. pf. 6/8/09 ("Ceresoli Supp.") at 2.

14. The Petitioner's project will include stringing 78 miles of new fiber optic cable specifically for the provision of cable television service. Petition ¶ 37; Ceresoli pf. at 9.

15. More than \$2.2 million will be invested in new fiber, head-end equipment, amplifiers and other facilities to enable the Petitioner to deliver IPTV service over a network using both fiber optic cable and copper loops. Petition ¶ 38; Ceresoli pf. at 9.

The prohibition of discrimination among customers of basic service (30 V.S.A. § 504(b)(4))

16. Topsham Communications undertakes the obligation to refrain from discriminating among customers regarding what type of service they receive. Petition ¶ 29.

17. The Petitioner will maintain a rate sheet on file for inspection in its corporate office; adherence to such rate sheet prevents discrimination among customers of basic service. Petition ¶ 69.

Basic service in a competitive market and if a competitive market does not exist, that the system provides basic service at reasonable rates determined in accordance with 30 V.S.A. § 218 (30 V.S.A. § 504(b)(5))

18. The Petitioner proposes to offer cable television service consisting of approximately 225 channels. Petition ¶ 24; exh. J; Application supp. exh. J-1.

19. The Petitioner's cable service offering consists of basic service and expanded services which include several tiers and premium channels. The basic cable service package will initially provide fifteen (15) television channels, including local broadcast and PEG channels, for \$26.95 per month. The next tier of service will initially provide at least forty-eight (48) television channels for a fixed price of \$41.95 per month. Premium channels HBO and Cinemax may be added to the basic service for an additional fixed monthly price of \$12.95 and \$9.95, respectively. The Petitioner plans to offer discounts for subscriptions to two or more premium channels. Petition ¶ 25; Application supp. exhs. G-1 and J-1.

20. The Petitioner may expand its package offerings or change the names of such packages as market forces dictate, except that Petitioner will not label any package other than its basic service package, as defined in 47 U.S.C. § 522, as "Basic Service." June 5 Letter.

21. The Petitioner's basic service will be reasonably priced. Findings 18–20, above.

Discussion

The service area, proposed service, and rates are comparable to those of other cable television providers in Vermont; I conclude that Topsham Communications meets the five statutory criteria of Section 504(b).

(3) Statutory Criteria — 30 V.S.A. § 504(c)(1)–(5)

A reasonable quality of service for basic, premium or otherwise, having regard to available technology, subscriber interest and cost (30 V.S.A. § 504(c)(1))

22. The Petitioner will provide basic service and expanded services which include several tiers and premium channels at reasonable costs to its subscribers. Application supp. exh. G-1; exh. J; supp. exh. J-1.

23. The technology used by the Petitioner will ensure a reasonable quality of service in its service offerings. Application exhs. E and J; supp. exh. J-1.

Construction, including installation, which conforms to all applicable state and federal laws and regulations and the National Electric Safety Code (30 V.S.A. § 504(c)(2))

24. The Petitioner will be subject to the requirements of Public Service Board Rule 8.000, including Rule 8.365(B), which requires compliance with the "Safety Rules for the Installation and Maintenance of Electric Supply and Communications Lines" of the National Bureau of Standards, with the National Electric Safety Code, and with all applicable federal, state, and municipal laws, ordinances, and regulations.

A competent staff sufficient to provide adequate and prompt service and to respond quickly and comprehensively to customer and department complaints and problems (30 V.S.A. § 504(c)(3))

Unless waived by the Board, an office which shall be open during usual business hours, have a listed toll-free telephone so that complaints and requests for repairs or adjustments may be received (30 V.S.A. § 504(c)(4))

25. The Petitioner is a wholly-owned subsidiary of Topsham Telephone, and its operations will be managed by Topsham Telephone's officers and operated by Topsham Telephone's staff. Petition ¶ 60; Ceresoli pf. at 7.

26. Donald A. Ceresoli, Sr., Chairman of Topsham Telephone and of Citizens of Hammond, has been involved in telecommunications for nearly 50 years. Petition ¶ 62.

27. Donald A. Ceresoli, Jr., president of Topsham Telephone and president and general manager of Citizens of Hammond, has been involved in the telecommunications industry for over 35 years. Petition ¶ 63.

28. Charlie Davenport, Topsham Telephone's general manager, will also serve as the general manager of Topsham Communications, LLC. Mr. Davenport has 15 years' experience in Vermont's telecommunications industry. Petition ¶ 64.

29. The Petitioner's ultimate parent, Citizens of Hammond, has been successfully operating cable television services in New York for 16 years, in addition to the IPTV service offered

through Citizens of Hammond to its telephone service subscribers since 2000. Petition ¶¶ 8–10; Ceresoli pf. at 7.

30. The Petitioner will benefit from the experience and expertise of the Citizens Cablevision and Castle Cable Television staff and management. Petition ¶ 66.

31. The Petitioner provides a business office in East Corinth that is open during normal business hours (Monday through Friday, 8:00 am to 4:30 pm), and an after-hours trouble-call support service available when the business office is closed. Petition ¶¶ 43 and 48.

32. Calls to the business office and to the after-hours trouble-call support service will be toll-free to subscribers in the Proposed Service Area. Petition ¶ 49.

33. Topsham Telephone is an experienced provider of telecommunications services in the State of Vermont and has the requisite management and consumer-relations skills to operate a cable television system in the State of Vermont. Petition ¶ 60; Ceresoli pf. at 7.

Reasonable rules and policies for line extensions, disconnections, customer deposits and billing practices (30 V.S.A. § 504(c)(5))

34. The Petitioner, as a competitive local exchange carrier, and its incumbent local exchange carrier parent, Topsham Telephone, are subject to Board rules that are applicable to telephone companies with respect to consumer protection standards, disconnections and customer complaints. Neither company has received complaints regarding its disconnection, deposits or billing practices over the last few years. Petition ¶¶ 51 and 70.

35. The Petitioner and the Department have reached agreement on the timing and application of the Petitioner's line-extension policy, which they seek to have incorporated as a set of conditions to any CPG issued in this case. June 5 Letter.

36. The aforementioned agreement expressly contemplates the pending amendment of the Board's Rule governing line extensions and obligates Petitioner to file a line-extension policy after the Board adopts the amended line-extension rule. June 5 Letter.

37. Under the aforesaid agreement:

- a. The Petitioner will string new fiber optic cable and install new facilities necessary to enable the Petitioner to deliver Triple-Play services³ to customers in the Proposed Service Area ("Project"). Petition ¶¶ 37, 56–59; June 5 Letter.
- b. The Petitioner agrees to complete the Project within six (6) months after receiving from the Board a final order and CPG authorizing the Petitioner to operate a cable television system. June 5 Letter.
- c. The Petitioner will not be required to undertake line extensions in the Proposed Service Area until three months following the completion of the Project. *Id.*
- d. The Petitioner shall not be required to overbuild another company, or provide cable service to locations served by another cable company, or to locations to which another cable company has made a binding commitment to extend service within the following eighteen (18) months. For purposes of this paragraph, "serve" means the duty to build a network so as to pass every required residence and business within the length of a standard no-charge service drop, and to be willing, ready, and able to provide service from that plant to any customer that requests it. *Id.*
- e. Revisions to Board Rule 8.000 are currently pending. The Petitioner will file a line-extension tariff as required by Rule 8.000 as amended, but the Petitioner will not be required to file a line extension tariff under the current Rule 8.000. *Id.*
- f. The Petitioner reserves its right to petition the Board at any time for a waiver of any requirements of Rule 8.000. *Id.*

Discussion

I conclude that Topsham Communications meets the five statutory criteria of Section 504(c). In particular, the proposed CPG conditions to which the Petitioner and the Department have agreed establish a reasonable policy for line extensions that will allow the Petitioner to complete the Project to enable the delivery of Triple-Play services to customers in the Proposed Service Area.

3. That is, telephone, cable television, and high-speed internet service, or any one or two of these.

(4) The "EMCO" Criteria of Rule 8.214(B)

Financial soundness and stability, both of the applicant generally and the particular proposal (EMCO #1)

38. The Petitioner is an existing service provider with affiliates that have over a century of combined experience providing telephone service and over 16 years of experience providing cable television service. Petition ¶¶ 6, 65.

39. The Petitioner proposes to fund the project through a Broadband Loan from the Department of Agriculture's Rural Utility Service ("RUS"), which approved in 2008 a \$2,229,000 loan to the Petitioner. Petition ¶ 20; Ceresoli pf. at 5.

40. The total estimated cost of the project to extend cable television services to the Proposed Service Area is \$2,366,304. The greatest portion of the project cost will be funded through the RUS loan, and the remaining \$137,304 will be paid for through a combination of internally-generated funds and a \$50,000 broadband grant. Petition ¶ 21; Ceresoli pf. at 5; Ceresoli Supp. pf. at 1, 2.

41. Financial studies confirm that the Petitioner will maintain sufficient working capital throughout the construction period to satisfy indicators that measure financial strength: (1) the Company will maintain a cash ratio of less than 1; (2) the Company will maintain a TIER⁴ ratio of better than 1.5; and (3) the Company will exceed a debt service coverage ratio of 1.5. Petition ¶ 54; Ceresoli pf. at 5, 6.

42. The Petitioner has provided an 11-year pro forma financial projection showing that the cable operations in the Proposed Service Area will be financially self-sufficient. Application exh. D.

43. The Petitioner is in sound financial condition and can fulfill all financial requirements in connection with the operation of a cable television system in Vermont. Petition ¶ 53.

4. Times Interest Earned Ratio, a measure of cash flow.

The present proposed service offerings to customers, including the number of channels and the ability and the capacity of the system to offer additional varied services in the future, and the ability to provide public access (EMCO #2)

44. The Petitioner will use a Channel Lineup offering approximately 225 channels.

Finding 7, above.

45. The Petitioner's channel capacity and facilities have been designed to be adequate and appropriate for PEG use, and Petitioner will provide a reasonably broad range of PEG programming. *Id.*

46. Petitioner's Channel Lineup will provide at least one and up to three channels for PEG use. Finding 8, above.

47. As a part of the Petitioner's IPTV Project, Petitioner plans to incorporate fiber optic cable into Topsham Telephone's telephone exchange network and, in Bradford, Fairlee, and parts of West Fairlee, to deploy a fiber-to-the-premise system. Petition ¶¶ 56–57.

48. The technology which the Petitioner proposes to install will ensure a reasonable quality of service, and the ability to expand services in the future. Petition ¶ 42; Application exh. E.

The commitment to a construction and in-service schedule (EMCO #3)

49. The Petitioner plans to deploy fiber optic cable and the facilities required to deliver high quality IPTV service through the use of fiber optic cable in addition to copper loops to subscribers in Topsham Telephone's service area. Petition ¶ 56.

50. The Petitioner also plans to deploy a fiber-to-the-premise system to enable the delivery of voice, broadband, and video services to customers in Bradford, Fairlee, and parts of West Fairlee. Petition ¶ 57.

51. Petitioner and its affiliates already provide broadband, local exchange, and interexchange services to customers in Corinth, Topsham, Orange, Washington, Newbury, West Fairlee, and Vershire. Petition ¶ 58.

52. The investment contemplated by Petitioner and the service for which the Petitioner requests a CPG will enable the Company to provide the "Triple-Play" services desired and requested by its customers. Petition ¶ 59.

53. Petitioner will complete the project within six (6) months after receiving from the Board a final order and CPG authorizing Petitioner to operate a cable television system. June 5 Letter.

54. Parties have agreed to a line-extension policy that allows Petitioner to complete the construction project prior to the commencement of any required line extensions in the Proposed Service Area. June 5 Letter; findings 37–39, above.

The experience and ability of the applicant to run and manage a cable TV system (EMCO #4)

55. Petitioner is an experienced and capable cable system operator. Findings 26–34, above.

The tariff and the rates proposed to be charged to customers (EMCO #5)

56. The Petitioner has filed a copy of its rate schedule, which it will maintain at its business offices as required by Board Rule 8.312(A). Petition ¶ 69; Supplemental exh. G-1.

Consumer policies, particularly re: complaints and problems (EMCO #6)

57. The Petitioner has promised to abide by Board rules that are applicable to cable television systems with respect to consumer protection standards and customer complaints. Ceresoli pf. at 8.

58. The Petitioner and its affiliates have records of maintaining excellent service. Petition ¶¶ 70–71.

59. The Petitioner will utilize Topsham Telephone's customer service team. Petition ¶ 46.

60. Technicians are located at the Petitioner's main office, which it shares in common with Topsham Telephone. If a customer service call taken during normal business hours requires the work of a technician, the technician may be dispatched from Petitioner's main office. If technicians are in the field, they can be reached via two-way radios. Petition ¶ 47.

61. Outside the customer service hours, a call-answering service will enable contact with a technician for service troubles. Petition ¶ 48.

62. In accordance with 30 V.S.A. § 504(c)(4), the Petitioner provides a toll-free number to its subscribers for customer service calls. Petition ¶ 49; finding 33, above.

Availability of service to maximum number of residences (EMCO #7)

63. Each of Topsham Telephone's approximately 1700 subscribers will have access to the Petitioners' IPTV services. Petition ¶ 72.

64. The Petitioner will also offer cable television services to certain customers in Bradford, Fairlee, and parts of West Fairlee through a fiber-to-the-premise network. Petition ¶ 73.

The quality of the engineering and materials used in the system (EMCO #8)

65. The Petitioner will provide in the Proposed Service Area a cable television system using high quality engineering and materials. Findings 12–15, above.

Logical fit with neighboring systems (EMCO #9)

66. The Petitioner's proposed service provides a logical fit with neighboring systems. Petition ¶ 74.

67. Only one cable television provider serves part of one of the communities included in Petitioner's Application, Charter Communications, Inc. ("Charter"). Charter currently provides cable television services to a portion of Bradford, one of the communities in which the Petitioner seeks to provide cable television services. Petition ¶ 75; Ceresoli pf. at 10.

68. Charter's service is not currently available to the Bradford subscribers the Petitioner seeks to serve with television services. Petition ¶ 76; Ceresoli pf. at 10.

69. The other communities in the Proposed Service Area currently have no access to cable television services. Petition ¶ 77; Ceresoli pf. at 10.

Discussion

I conclude that Topsham Communications meets the nine "EMCO" criteria set forth in Board Rule 8.214(B).

IV. CONCLUSION

Based upon the foregoing findings of fact, I conclude and recommend that the Public Service Board find that granting a CPG to Topsham Communications, LLC, subject to the

conditions set forth in the proposed CPG, which includes provisions proposed by the parties, will promote the general good of the state.

The Parties have waived service of this Proposal for Decision in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 5th day of August, 2009.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and Conclusions of the Hearing Officer are adopted.
2. A certificate of public good shall be issued to Topsham Communications, LLC, to provide cable television service in the Towns of Corinth, Topsham, Orange, Washington, Bradford, Newbury, Fairlee, West Fairlee, and Vershire, Vermont.

Dated at Montpelier, Vermont, this 20th day of August, 2009.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	
)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 20, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.